

United States  
Circuit Court of Appeals  
For the Ninth Circuit. 7

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SAMUEL W. BACKUS, as Commissioner of Immigration at the Port of  
San Francisco, Who is Now Succeeded by EDWARD WHITE, as  
Commissioner of Immigration at Said Port,

Appellant,

vs.

HARRY KATZ,

Appellee.

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Transcript of Record.

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Upon Appeal from the Southern Division of the United States  
District Court for the Northern District of California,  
First Division.

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Filed

JAN 25 1917

F. D. Monkton,  
Clerk.



**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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### **Names of Attorneys of Record.**

For the Respondent and Appellant: U. S. ATTORNEY.

For the Petitioner and Appellee: MARSHALL B. WOODWORTH, Esq., and S. LUKE HOWE, Esq., San Francisco.

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*In the District Court of the United States, in and for the Northern District of California, First Division.*

No. 15,752.

In the Matter of HARRY KATZ on Habeas Corpus.

### **Praeceptum for Transcript of Record.**

To the Clerk of said Court:

Sir: Please copy the following papers to be used on appeal in the above-entitled cause:

1. Petition for Writ of Habeas Corpus, consisting of first nine pages thereof, thus omitting exhibits.
2. Order to Show Cause.
3. Demurrer to Petition.
4. Opinion and Order Overruling Demurrer and Directing Writ to Issue.
5. Writ of Habeas Corpus and Marshal's Return to Service thereof.
6. Return to Petition.
7. Traverse to Return.
8. Order of Discharge.
9. Order Discharging Petitioner.
10. Respondent's Exhibit "A" incorporated into and made a part of Return.

11. Stipulation of Attorneys for an Order of Court transferring record of the Bureau of Immigration to the United States Circuit Court of Appeals.

JNO. W. PRESTON,  
United States Attorney.

CASPER A. ORNBAUN,  
Asst. United States Attorney.

Dated this 28th day of June, 1916.

[Endorsed]: Filed June 28, 1916. W. B. Maling,  
Clerk. By Lyle S. Morris Deputy Clerk. [1\*]

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*In the District Court of the United States, Northern  
District of California, First Division.*

(No. 15,752.)

In the Matter of HARRY KATZ, on Habeas Corpus.

**Petition for Writ of Habeas Corpus.**

To the Honorable, the said District Court of the  
United States, Northern District of California,  
First Division:

The petition of the above named respectfully sets  
forth and states:

(I)

That the petitioner, Harry Katz, is a resident of the city of Sacramento, State and Northern District of California, and has been a regularly domiciled resident of said State and Northern District of California continuously last past for the period of fourteen years; that he first arrived and lawfully entered

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\*Page-number appearing at foot of page of original certified Transcript of Record.

the United States at the port of New York in the year 1901, with the then intention of permanently remaining and residing in the United States and of becoming a regularly domiciled resident, denizen and inhabitant of the United States, and a citizen thereof, and that he has since continuously resided in the United States with the exception of a temporary brief trip made to England at the time of the death of his father, and that during all of said time, since his arrival in the United States, he has been, and now is, a regularly domiciled resident, denizen and inhabitant of the State and Northern District of California, and of the United States of America, and, up to and at the time of the unlawful detention, [2] restraint and imprisonment hereinafter complained of, was lawfully and regularly domiciled and living in the city of Sacramento, State and Northern District of California, and had and has no home, abode or domicile elsewhere.

That your petitioner, when he first arrived in the United States, plied his trade as barber and afterwards became and now is a chiropodist, actively engaged as such; that he has offices in Stockton and Sacramento, and makes occasional business trips to towns and villages in and around Stockton and Sacramento, for the purpose of obtaining and visiting his patients; that he is a hard-working, industrious and frugal man, who has saved up his money and that he has made some small investments in buying and selling real estate.

(II)

That your said petitioner is unlawfully imprisoned,

restrained, confined and detained of his liberty by the Commissioner of Immigration at the port of San Francisco, and is about to be taken from his domicile and abode in the State of California, and from his domicile and abode in the United States of America, and sent against his will to the Kingdom of Great Britain, of which he is not a resident and has not been for very many years and in which he has no domicile, abode, home or residence.

That the illegality of said imprisonment, detention, confinement and restraint consists in this:

That the said Commissioner of Immigration claims to have the legal right to, and does, hold the said petitioner in imprisonment and detention, and claims the right and is about to deport and banish him from the State of California and from the United States by virtue of and under the authority of a [3] pretended warrant of deportation directing him so to deport and banish him, which said warrant, it is claimed by said Commissioner of Immigration, was issued by the Secretary of Labor under and by virtue of the laws of the United States made and promulgated to regulate and provide for the deportation of certain alien persons, to wit, under the authority of the Immigration Act of February 20, 1907 (34 Stat. 898), as amended by the Act of March 26, 1910, (36 Stat. 263.)

That the said Secretary of Labor and the said Commissioner of Immigration had, and now have, no jurisdiction or lawful authority so to deport or banish the said petitioner from the United States for the following reasons, to wit:

First. That your petitioner did not have any legal hearing upon the charges made against him in the warrant of arrest issued against him dated March 18, 1914, a copy of which warrant of arrest is appended hereto, marked Exhibit "A," and made a part hereof;

Second. That this petitioner is not amenable to any of the provisions of the Act of February 20, 1907, as amended by the Act of March 26, 1910, in that there was and is no sufficient legal or competent or any, evidence showing that he is unlawfully within the United States in that he has been found connected with the management of a house of prostitution; and that he has been found receiving, sharing in or deriving benefit from the earnings of a prostitute, or prostitutes;

Third. That there was and is no sufficient, or any, warrant of arrest authorizing the Commissioner of Immigration at Angel Island, California, or any of his subordinates, to arrest this petitioner and entertain or proceed to entertain [4] any hearings or proceedings whatsoever upon any charge or charges arising out of any act or acts of this petitioner under the provisions of the Act of February 20, 1907, as amended by the Act of March 26, 1910;

Fourth. That there was and is no sufficient, or any, warrant of deportation authorizing the Commissioner of Immigration at Angel Island, California, in whose custody, confinement, restraint and imprisonment this petitioner now is, to deport this petitioner from the port of San Francisco to a foreign country or elsewhere, or to hold this petitioner in

detention and imprisonment for any purpose whatsoever;

Fifth. That this petitioner was and is ordered deported without any due process of law, or proof of any kind or character proving or tending to prove said alleged charges made against him.

(III)

This petitioner further alleges that, before any pretended warrant of deportation was issued against him as aforesaid, the said petitioner was denied by the said Secretary of Labor and by the Immigration officers at the port of San Francisco that full and fair hearing guaranteed by the law and, in that behalf, your petitioner alleges as follows:

First. That your petitioner was subjected to private and secret investigations and examinations without his consent and compelled to be a witness against himself without first having been advised and informed of the charges pending against him and of his rights in the matter and of the fact that any statement made by him might, could and would be used against him, and that the consequences of any unfavorable decision would result in his deportation and banishment, and without [5] being allowed or permitted first to be advised by, or have the benefit of legal counsel;

Second. That the so-called evidence attempted to be presented and introduced against your petitioner, upon which said pretended warrant of deportation is based, consists of statements based on information and belief, contained in affidavits, without any opportunity whatever of cross-examining the persons mak-

ing said affidavits, or without any notice whatever to said petitioner, or to his attorneys, or any of them, that said persons were about to, or would, swear to said affidavits, and consists, further, of *ex parte* and hearsay statements, matters of opinion, conjecture and surmise, private reports and other matter of an incompetent, immaterial and irrelevant character, not permitted to be admitted in the courts of justice of the United States, State or Federal, and wholly insufficient to support any of the charges upon which it is sought to deport this petitioner, all of which will more fully appear by reference to a copy of the proceedings before said Commissioner of Immigration and the Secretary of Commerce and Labor, made a part hereof and marked Exhibits "A" to "VVV";

Third. Your petitioner further alleges that the said Immigration officers further acted in bad faith and arbitrarily and illegally in said pretended trial, or hearings, in not producing any witnesses or evidence to support the truth of the charges alleged against this petitioner, and in acting wholly and entirely and solely upon statements based on information and belief, contained in affidavits, without any opportunity whatever of cross-examining the persons making said affidavits, or without any notice whatever to said petitioner, or to his [6] attorneys, or any of them, that said persons were about to, or would, swear to said affidavits, and in acting wholly and entirely and solely upon *ex parte* affidavits without an opportunity for cross-examination, and in denying the right of cross-examination as to all of the persons whose affidavits were presented against this petitioner, and in

acting upon hearsay statements and private reports, matters of opinion, conjecture and surmise, and other matter of an incompetent, immaterial, and irrelevant character, not permitted to be admitted in the courts of justice in the United States, State or Federal, and wholly insufficient to support any of the charges upon which it is sought to deport this petitioner, all of which will more fully appear by a reference to a copy of the proceedings hereinabove referred to, attached to this petition and made a part hereof.

(IV)

That said petitioner was denied the right of an appeal from the decision of the Secretary of Commerce and Labor and that the only hearing allowed him was the hearing before the Secretary of Commerce and Labor, at which the warrant of deportation was issued, at which hearing this petitioner was not present and did not have any notice thereof, the other hearings, if any, at Angel Island, California, before the Commissioner of Immigration, being merely in the nature of private detective investigations against this petitioner and of secret examinations of this petitioner without his consent and at times without his presence and without being represented by legal counsel at all stages of the proceedings or even being permitted first to obtain legal advice or being warned or advised as to his rights in the matter or at all. [7]

(V)

That said pretended hearing before said Commissioner of Immigration did not, and does not, constitute a full and fair, or full or fair, hearing within the meaning of the law, in that this petitioner was not

permitted, nor were any of his counsel, to see or peruse or obtain a copy of the recommendations of the examining officer and the officer in charge, as contemplated by paragraph c of subd. 4 of Rule 22 of the Rules relating to arrest and deportation on warrant, promulgated by the Department of Commerce and Labor, Bureau of Immigration and Naturalization, on November 15, 1911, First Edition; that such practice is not consistent with the eternal principles of right and justice; that this petitioner or his counsel had no opportunity to know what the recommendations of the Immigration officials were and upon what reasons said recommendations, being adverse, were based, had no opportunity to take exceptions thereto or to correct any errors therein, or to combat or refute the same or to protect the rights of this petitioner before the Secretary of Labor when he received said adverse recommendations and considered and acted upon the same and ordered this petitioner deported.

(VI)

That your petitioner further represents that said Immigration Act of February 20, 1907, as amended by the Act of March 26, 1910, was not intended, and does not, in law, operate retroactively and is not and cannot be an *ex post facto* law, and that much of the statements based on information and belief, and *ex parte* and hearsay statements, matters of opinion, conjecture and surmise, private reports and other matter of an incompetent, immaterial and irrelevant character, not permitted [8] to be admitted in the courts of justice of the United States, State or Fed-

eral, introduced against your petitioner, related to alleged acts alleged to have been committed by this petitioner previous to the amendatory act of March 26, 1910, and related to matters alleged to have taken place in the year 1909.

(VII)

That said Secretary of Labor and the Immigration officials in the various particulars above set forth, acted arbitrarily and that their proceedings were and are manifestly unfair, and that the action of such executive officers was and is such as to prevent a fair investigation, and that there was and is a manifest abuse of the discretion committed to such executive officers by statute,

(VIII)

This petitioner avers that he has herewith appended to this petition and made a part hereof, a full, true and correct copy of all of the proceedings before the Immigration officials, so far as the same have been disclosed to this petitioner or to his counsel, and of which he is, or his counsel are, aware, and the respondent has in his possession the originals thereof.

(IX)

That your petitioner has exhausted all legal or other remedies specified in the Acts of Congress relating to the subject matter.

(X)

That your petitioner is not an alien or other immigrant; and that he has acquired and now holds a fixed, permanent resident and domicile in the city of Sacramento, State and Northern District of California, and has enjoyed and maintained [9] his residence

and domicile in the United States for many years continuously last past without molestation or interference until the time of your petitioner's arrest and threatened deportation as aforesaid.

(XI)

That your petitioner is now detained, imprisoned, confined and restrained of his liberty and is imprisoned at said Angel Island, California, and is held and imprisoned by the order and direction of the Secretary of Labor and is in the custody of the Commissioner of Immigration at the port of San Francisco, California, who claims the right to deport this petitioner under and by virtue of the pretended warrant of deportation hereinabove referred to.

That said Commissioner of Immigration threatens to take, carry away and deport this petitioner to some foreign country forthwith, and will so deport this petitioner unless stayed by the writ of this Court or the order and direction of this Court.

WHEREFORE your petitioner prays that a writ of habeas corpus issue out of this Honorable Court, and that he be brought before this Court then and there to inquire into the cause of his said imprisonment and threatened deportation; that, in the meantime, all proceedings against him be stayed, and that he be not taken without the jurisdiction of this Court during the pendency of these proceedings and that your petitioner be admitted to bail in such sum as to this Court may seem meet and proper; and that said Immigration officers be required to make a full and complete return showing the cause of the detention of your petitioner; and, finally, that your peti-

tioner be restored to his liberty and permitted to  
[10] go hence without day.

HARRY KATZ,  
Petitioner.

State of California,  
City and County of San Francisco,  
Northern District of California,—ss.

Harry Katz, being first duly sworn, deposes and says: That he has read the foregoing petition for a writ of habeas corpus and knows the contents thereof; that the same is true of his own knowledge except as to those matters which are stated on information and belief, and, as to those matters, that he believes them to be true.

HARRY KATZ.

Subscribed and sworn to before me this 16th day of December, 1914.

[Seal] MARTIN ARONSOHN,  
Notary Public in and for the City and County of San Francisco, State of California.

(Here Follows Exhibits "A" to "BBB.")

[Endorsed]: Filed Dec. 16, 1914. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [11]

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*In the District Court of the United States, Northern  
District of California, First Division.*

In the Matter of HARRY KATZ, on Habeas Corpus.

**Order to Show Cause.**

Upon reading the petition on file herein and good cause appearing therefor, it is ordered that the respondent, the Commissioner of Immigration at the

port of San Francisco, California, appear in this court on the 24 day of December, 1914, at 10 o'clock A. M., and then and there show cause, if any, why a writ of habeas corpus should not issue as prayed for and that during the pendency of these proceedings the petitioner be not removed from the jurisdiction of this Court, and that a copy of this order and of said petition be served upon respondent forthwith and that the petitioner be admitted to bail in the sum of one thousand dollars.

M. T. DOOLING,  
U. S. District Judge.

Dated December 16, 1914.

[Endorsed]: Filed Dec. 16, 1914. W. B. Maling,  
Clerk. By T. L. Baldwin, Deputy Clerk. [12]

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*In the District Court of the United States, in and for  
the Northern District of California, First Division.*

In the Matter of HARRY KATZ, on Habeas Corpus.

**Demurrer to Petition for Writ of Habeas Corpus.**

Now comes the respondent, Samuel W. Backus, Commissioner of Immigration at the port of San Francisco, in the State and Northern District of California, and demurs to the petition for a writ of habeas corpus in the above-entitled matter and for grounds of demurrer alleges:

I.

That said petition does not state facts sufficient to entitle the petitioner to the issuance of a writ of habeas corpus or any relief thereon.

## II.

That said petition is insufficient in that the statements in the petition relative to the record of the testimony taken on the trial of the applicant, are statements of conclusions of law.

WHEREFORE, respondent prays that the writ of habeas corpus be denied.

JNO. W. PRESTON,

United States Attorney.

WALTER E. HETTMAN,

Asst. United States Attorney,  
Attorneys for Respondent.

Service admitted this 5th day of January, 1915.

MARSHALL B. WOODWORTH,

Atty. for Pet.

[Endorsed]: Filed Jan. 5, 1915. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [13]

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*In the District Court of the United States, in and for  
the Northern District of California, First Division.*

No. 15,752.

In the Matter of HARRY KATZ, on Habeas Corpus.  
**Opinion and Order Overruling Demurrer and Direct-  
ing Writ of Issue.**

ON DEMURRER TO PETITION FOR A WRIT  
OF HABEAS CORPUS.

MARSHALL B. WOODWORTH, and S.  
LUKE HOWE, Attorneys for Petitioner.

JOHN W. PRESTON, United States Attorney  
and CASPAR A. ORNBAUN, Assistant  
United States Attorney, Attorneys for Re-  
spondent.

The records here which accompany the petition shows no real evidence against the petitioner. The affidavits are upon information and belief, and express only the opinions of the affiants. It is true that in this State the reputation of a house as a house of ill-fame, may be shown, but I know of no rule, here or elsewhere, which permits the ownership or management of such a house to be thus proved. There should be in my opinion some fair substantial testimony upon which to base an order deporting from this country an alien who has lawfully entered it. The record here is too long to recite, but the closest scrutiny of it will not reveal in all the testimony taken, whether in the presence or absence of petitioner, any competent evidence, and by that I mean evidence other than pure hearsay and expressions of opinion, tending to support the finding that petitioner was either connected with the management of a house of prostitution or has been found receiving, sharing in, or deriving benefit from the earnings of a prostitute or prostitutes. It may be true that the presence [14] of petitioner in this country is displeasing to many worthy people, but he may not be deported for that reason. He can only be deported after a fair hearing, and then only when the order deporting him finds support in something other than mere hearsay and opinion. The demurrer to the petition will be overruled, and a writ will issue returnable December 11th, 1915, at 10 o'clock A. M.

November 26th, 1915.

M. T. DOOLING,  
Judge.

[Endorsed]: Filed Nov. 26, 1915. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [15]

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*In the District Court of the United States, in and for the Northern District of California, First Division.*

No. 15,752.

In the Matter of HARRY KATZ, on Habeas Corpus.

**Writ of Habeas Corpus.**

The President of the United States of America, to the Commissioner of Immigration, Port of San Francisco, Calif., Angel Island, Calif., GREETING:

YOU ARE HEREBY COMMANDED that you have the body of the said person by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said person shall be called or charged, before the Honorable M. T. DOOLING, Judge of the District Court of the United States, for the Northern District of California, at the courtroom of said court, in the city and county of San Francisco, California, on the 11th day of December, A. D. 1915, at 10 o'clock A. M. to do and receive what shall then and there be considered in the premises.

AND HAVE YOU THEN AND THERE THIS WRIT.

WITNESS, the Honorable M. T. DOOLING, Judge of the said District Court, and the seal thereof

at San Francisco, in said District on the 26th day of November, A. D. 1915.

[Seal]

W. B. MALING,  
Clerk.

By C. W. Calbreath,  
Deputy Clerk. [16]

**Return on Service of Writ.**

United States of America,  
Northern District of California,—ss.

I hereby certify and return that I served the annexed Writ of Habeas Corpus on the therein-named Commissioner of Immigration at the port of San Francisco, Cal., by handing to and leaving a true and correct copy thereof with Edward White the above named Commissioner personally at San Francisco, Cal. in said District on the 6th day of December, A. D., 1915.

J. B. HOLOHAN,  
U. S. Marshal.  
By Thos. F. Mulhall,  
Deputy.

[Endorsed]: Filed Dec. 9, 1915. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [17]

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*In the District Court of the United States, in and for  
the Northern District of California, First Division.*

No 15,752.

In the Matter of HARRY KATZ, on Habeas Corpus.

**Return to Petition for Writ of Habeas Corpus**

Now comes Edward White, Commissioner of Im-

migration at the Port of San Francisco, by Charles D. Mayer, Immigrant Inspector, and in return to the Order to Show Cause, issued by the said Court on the petition of Harry Katz, for a writ of habeas corpus, and to said petition, admits, denies and alleges as follows:

ADMITS that the petitioner, Harry Katz, is a resident of the city of Sacramento, State and Northern District of California, and has been a regularly domiciled resident of said State and Northern District of California, continuously last passed for the period of fourteen years.

ADMITS that he first arrived and lawfully entered the United States at the Port of New York in the year 1901, and has ever since continuously resided in the United States, with the exception of a temporary brief trip to England, but DENIES that up to and at the time of his detention, restraint and imprisonment, hereinafter complained of, that he was lawfully and regularly domiciled and living in the city of Sacramento, State and Northern District of California, and had and has no home, abode, or domicile elsewhere.

ADMITS that petitioner plied his trade as barber when [18] he arrived in the United States and afterwards became, and now is a chiropodist; ADMITS that he has offices in Stockton and Sacramento.

As to the allegation on paragraph 11 of page 2 of said petition, to wit, that he is a hard working, industrious and frugal man, who has saved up his money, and that he had made some small investments in buying and selling real estate, respondent has no infor-

mation or belief upon the subject sufficient to enable him to answer said allegation, and basing his answer upon such lack of information, denies the same.

DENIES that said petitioner is unlawfully imprisoned, restrained, confined and detained, or is unlawfully imprisoned, or restrained, or confined, or detained of his liberty by the Commissioner of Immigration, or otherwise, at the port of San Francisco, or elsewhere, but ADMITS that said petitioner is about to be taken from his domicile in the State of California and in the United States of America, and sent against his will to the Kingdom of Great Britain, and in this connection respondent alleges that the said Kingdom of Great Britain is the country from which said petitioner came at the time of his entering the United States of America.

ADMITS that the said Commissioner of Immigration claims to have the legal right and is about to deport said petitioner from the State of California and from the United States by virtue of and under the authority of a warrant of deportation directing the said Commissioner to deport said petitioner.

ADMITS that said Commissioner of Immigration claims that said warrant of deportation was issued by the Secretary of Labor under and by virtue of the laws of the United States made and promulgated to regulate and provide for the deportation of certain [19] alien persons, to wit, under the authority of the Immigration Act of February 20, 1907 (34 Stats. 898), as amended by the Act of March 26, 1910 (36 Stats. 263) and in this connection respondent alleges that said warrant of deportation was issued by the

said Secretary of Labor under and by virtue of the laws of the United States of America.

DENIES that the said Secretary of Labor and the said Commissioner of Immigration, or either of them, had or that they now have, no jurisdiction or lawful authority to deport or banish the said petitioner from the United States.

DENIES that petitioner did not have any legal hearing upon the charges made against him in the warrant of arrest issued against him, dated March 18, 1914.

DENIES that said petitioner is not amenable to any of the provisions of the Act of February 20, 1907, as amended by the Act of March 26, 1910; DENIES that there was and is no sufficient legal, or competent, or any evidence showing that said petitioner is unlawfully within the United States, and in this connection respondent alleges that said warrant of deportation of said petitioner is based upon evidence that said petitioner has been found receiving, sharing in, and deriving benefit from the earnings of a prostitute, or prostitutes, and connected with the management of a house of prostitution.

DENIES that there was and is no sufficient, or any, warrant of arrest, authorizing the Commissioner of Immigration at Angel Island, California, or any of his subordinates to arrest petitioner and entertain or proceed to entertain hearing or proceedings upon any charge or charges against petitioner arising from acts committed by said petitioner and bringing him within the provisions of the Act of February 20, 1907, as amended by the Act of March 26, 1910. [20]

DENIES that there was no sufficient, or any, warrant of deportation authorizing the Commissioner of Immigration at Angel Island, California, to deport this petitioner to a foreign country or elsewhere, or to hold this petitioner in detention and imprisonment for any purpose whatsoever.

DENIES that petitioner was and is ordered deported without any due process of law or proof of any kind or character, proving or tending to prove said alleged charged made against him.

DENIES that petitioner, either before or after, the warrant of deportation was issued against him, was denied by the said Secretary of Labor and by the Immigration officers, or by the Secretary of Labor, or by the Immigration officers, or by any one, or at all, at the Port of San Francisco, or elsewhere, a full and fair hearing, as provided by law.

DENIES that petitioner was subjected to private and secret investigations and examinations, or private or secret investigations or examinations, without his consent; DENIES that petitioner was compelled to be a witness against himself, and in this connection respondent alleges that upon the arrest of said petitioner, he was taken before the Immigration officers at Angel Island Station, San Francisco, California, and there given a full, fair and impartial hearing and accorded all of the privileges and rights given to him by law; that all of the statements made at the said examination or any other examination had of said petitioner pending his investigation upon the charges referred to in said warrant of arrest have been free and voluntary.

DENIES that the evidence presented, or attempted to be presented, and introduced against petitioner, and upon which said warrant of deportation is based, consists of statements based on information and belief contained in affidavits, consists further of [21] *ex parte* and hearsay statements, matters of opinion, conjecture, and surmise, private reports and other matters of an incompetent, immaterial and irrelevant character and wholly insufficient to support any of the charges upon which it is sought to deport said petitioner, and in this connection respondent alleges that while some of the evidence presented and introduced against petitioner consists of statements based upon information and belief, other affidavits are positive in character; ADMITS that some of the evidence introduced against petitioner, and upon which said warrant of deportation is based, consists of *ex parte* and hearsay statements, matters of opinion, conjecture and surmise, and private reports, but in this connection respondent alleges that the matters contained in said affidavits were wholly justified from the surrounding circumstances and the information which has come to the knowledge of those who made said affidavits.

DENIES that the said Immigration officers acted in bad faith and arbitrarily and illegally, or in bad faith, or arbitrarily or illegally, in said pretended trial or hearings, or in any trial or hearing, or hearings, in not producing any witnesses or evidence to support the truth of the charges alleged against this petitioner, and in this connection respondent alleges that ample and sufficient evidence was pro-

duced to support the truth of the charges against said petitioner.

DENIES that said Immigration officers acted in bad faith and arbitrarily and illegally, or in bad faith, or arbitrarily or illegally, in said pretended trial, in acting wholly, entirely, and solely upon statements based on information and belief, or based on information or belief, and contained in affidavits, and in this connection respondent alleges that some of the affidavits were positive in character and not based upon information and belief. [22]

DENIES that said Immigration officers acted in bad faith and arbitrarily and illegally, or in bad faith, or arbitrarily, or illegally, in not giving said petitioner the opportunity to cross-examine the persons making said affidavits, or in not warning said petitioner what the contents of said affidavits would be, and in this connection respondent alleges that said petitioner was given an opportunity in every instance to examine the contents of each and every affidavit filed in the above-entitled matter and to reply to the same, and interpose any defense which the said petitioner deemed advisable.

Respondent further alleges that said petitioner was never denied the right to be represented by counsel in any of the hearings in the above-entitled matter, and that said petitioner was represented by counsel who had an opportunity to submit any and all evidence which he desired to submit in behalf of said petitioner before any determination was made of the rights of said petitioner in the above-entitled matter.

DENIES that the said pretended hearing, or

hearing, before said Commissioner of Immigration, did not and does not constitute a full and fair, or full or fair, hearing within the meaning of the law, in that said petitioner was not permitted, nor was any of his counsel, to see or peruse, or obtain, a copy of the recommendations of the examining officer and the officers in charge.

DENIES that it was ever contemplated by paragraphs 1 of subdivision 4 of Rule II of the New Rules relating to arrest and deportation on warrant promulgated by the Department of Commerce and Labor, Bureau of Immigration and Naturalization, on November 15, 1911, first edition, that said petitioner should have access to, or be given knowledge of the recommendations of the examining [23] officer and officers in charge of the said Immigration work, and in this connection respondent alleges that all of the evidence of every kind and nature submitted in the above-entitled matter, was examined by the petitioner or his counsel before any final determination of the rights of said petitioner were made by the said Immigration officers and that said petitioner was given an opportunity to reply to any and all evidence submitted in behalf of said Immigration officers, and to submit any and all evidence in his behalf that the petitioner desired to submit;

DENIES that the refusal on the part of the said Immigration officers to permit the said petitioner to see or peruse or obtain a copy of the recommendations of the examining officer and the officers in charge is not consistent with the eternal principles of right and justice.

DENIES that said petitioner, or his counsel, or either of them, had no opportunity to know what the recommendations of the Immigration officials were and upon what reasons said recommendations being adverse were based, and in this connection respondent alleges that before the said recommendations of the said Immigration officials were made petitioner and his counsel were given the opportunity to examine, and did examine the affidavits upon which said recommendations were made, and that said petitioner and his counsel had every opportunity after examining said affidavits and other evidence submitted on behalf of the said Immigration officers to combat and refuse, the same and to protect the rights of said petitioner by submitting any defense or other evidence that the said petitioner deemed advisable.

DENIES that the said Immigration Act of February 20, 1907, as amended by the Act of March 26, 1910, was not intended and does not in law operate retroactively. [24]

DENIES that the said Secretary of Labor and Immigration officials in various particulars above set forth, or in any particulars, acted arbitrarily, and that other proceedings were and are manifestly unfair, or unfair, in any particular, and further DENIES that the said action of such executive officers was and is such as to prevent a fair investigation; DENIES that there was and is, or was or is a manifest, or any abuse of discretion committed to such executive officers by statutes or otherwise.

DENIES that said petitioner is not an alien or other immigrant, and DENIES that said petitioner

has enjoyed and maintained, or enjoyed or maintained his residence and domicile, or residence or domicile, in the United States for many years continuously last past without molestation or interference.

As a further, separate and distinct answer and defense to the petition on file herein, respondent alleges that since the proceedings taken to effect the deportation of said petitioner, certain hearings have been conducted and evidence submitted, both by said petitioner and the said Immigration authorities and officers; that said hearings were conducted and the testimony and other evidence taken by the Immigration officials acting for and on behalf of the Government of the United States and that all of the evidence and other testimony given or taken at said hearings, or which has been considered in any manner in determining whether or not the said petitioner should be deported, has been recorded by said Immigration officials in a record known as the "Immigration Record, in the Matter of Harry Katz on Habeas Corpus," and numbered 53,770; that said testimony and other evidence and all of the exhibits that were considered with the said record are by reference incorporated into and made a part of this return and the same are filed herewith. [25]

WHEREFORE, respondent prays that said petition for a writ of habeas corpus be denied and that the Order to Show Cause be discharged and that said alien be remanded to the custody of the respondent for deportation, as provided for in said warrant of

deportation heretofore issued by the Secretary of Labor of the United States, and for such other and further relief as to this Court seems just and equitable.

JNO. W. PRESTON,

United States Attorney.

CASPER A. ORNBAUN,

Asst. United States Attorney,

Attorneys for Respondent.

United States of America,

Northern District of California,

City and County of San Francisco,—ss:

Charles D. Mayer, being first duly sworn, deposes and says: That he is a Chinese and Immigrant Inspector connected with the Immigration Service for the port of San Francisco, and has been specially directed to appear for and to represent the respondent, Edward White, Commissioner of Immigration, in the within entitled matter; that he is familiar with all the facts set forth in the within Return to Petition for Writ of Habeas Corpus and knows the contents thereof; that it is impossible for the said Edward White to appear in person or to give his attention to said matter; that of affiant's own knowledge the matters set forth in the Return to the Petition for Writ of Habeas Corpus are true, excepting those matters which are stated on information and belief, and that as to those matters, he believes it to be true.

CHARLES D. MAYER.

Subscribed and sworn to before me this 8th day of January, 1916.

[Seal]

T. L. BALDWIN,  
Deputy Clerk U. S. District Court, Northern Dis-  
trict of California.

[Endorsed]: Filed Jan. 8, 1916. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [26]

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*In the District Court of the United States, Northern  
District of California, First Division.*

No. 15,752.

In the Matter of HARRY KATZ, on Habeas Corpus.  
**Traverse to Return to Order to Show Cause Why  
Writ of Habeas Corpus Should not Issue.**

Now comes Harry Katz, petitioner for a writ of habeas corpus in the above-entitled matter, through his attorney, Marshall B. Woodworth, and, for answer or traverse to the Return to the Order to show cause why writ of habeas corpus should not issue, filed herein on January 8, 1916, by the Commissioner of Immigration at Angel Island, California, states as follows:

Said petitioner reaffirms, reasserts, and realleges all of the matters, things and facts by him alleged in his said petition for a writ of habeas corpus, and, in this connection, he refers to the said petition on file and hereby makes the allegations of said petition a part of this answer or traverse.

And, further answering said Return and what purports to be a full and complete transcript of all of the

proceedings had before the Immigration Department in a record known as the "Immigration Record, in the Matter of Harry Katz on Habeas Corpus," and numbered 53,770, and appended to and made a part of said Return, your petitioner states that if it should appear that said record above referred to contains any further, additional, different or other alleged testimony or alleged evidence, documents, reports, private correspondence between the various officers of the Immigration Service, and any other papers, memoranda or data, other than those contained and set out in the [27] various exhibits appended to the petition for a writ of habeas corpus then that said further, additional, different or other alleged testimony or alleged evidence, documents, reports, private correspondence between the various officers of the Immigration service, and any other papers, memoranda or data, were never disclosed or exhibited until up to the present time to said petitioner or to his attorneys or any of them, nor was said petitioner or any of his attorneys ever informed or appraised, either directly or indirectly, of the existence, nature or contents of any such further, additional, different or other alleged testimony or alleged evidence, documents, reports, private correspondence between the various officers of the immigration service, and any other papers, memoranda or data, other than those contained and set out in the various exhibits attached to the petition for a writ of habeas corpus, and said petitioner did not have, nor any of his attorneys, any opportunity to defend against such further, additional, different or other alleged testimony or al-

leged evidence, documents, reports, private correspondence between the various officers of the Immigration service, or any other papers, memoranda or data, and to refute and to present proofs against the same, and, in this respect, your petitioner through his said attorney, avers that said hearing or pretended hearing or trial was unfair and in violation of law and of the constitutional rights and guaranties accorded to this petitioner, in consideration of which he is entitled to his discharge by the writ of habeas corpus.

WHEREFORE, your petitioner prays that said Return be deemed insufficient in law to justify or authorize the further detention or imprisonment of your petitioner and that he may be discharged [28] and restored to his liberty and go hence without day.

MARSHALL B. WOODWORTH,  
Attorney for Harry Katz, Petitioner.

State and Northern District of California,  
City and County of San Francisco.

Marshall B. Woodworth, being first duly sworn, says that he has read the foregoing traverse by him subscribed and knows the contents thereof and that the matters and things therein set forth are true in substance and in fact.

MARSHALL B. WOODWORTH.

Subscribed and sworn to before me this 10th day of January, 1916.

[Seal] MARTIN ARONSOHN,  
Notary Public in and for the City and County of San Francisco, State of California.

Service admitted by receipt of copy this Jan. 10, 1916.

JNO. W. PRESTON,

U. S. Atty.,

Atty. for Respondent.

[Endorsed]: Filed Jan. 10, 1916. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [29]

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*In the District Court of the United States, in and for  
the Northern District of California, First Di-  
vision.*

No. 15,752.

In the Matter of HARRY KATZ, on Habeas  
Corpus.

**Order Discharging Petitioner.**

MARSHALL B. WOODWORTH, Esq., and  
S. L. HOWE, Esq., Attorneys for Peti-  
tioner.

JOHN W. PRESTON, Esq., United States At-  
torney and CASPER A. ORNBAUN, Esq.,  
Assistant United States Attorney, Attor-  
neys for Respondent.

The return to the writ of habeas corpus herein  
presents no question either of law or of fact that was  
not urged and considered upon the demurrer to the  
petition. I am satisfied with the conclusions reached  
at that time, and it is therefore ordered that peti-  
tioner be discharged.

January 13th, 1916.

M. T. DOOLING,

Judge.

[Endorsed]: Jan. 13, 1916. W. B. Maling, Clerk.  
By C. W. Calbreath, Deputy Clerk. [30]

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*In the District Court of the United States, Northern  
District of California.*

No. 15,752.

In the Matter of HARRY KATZ, on Habeas  
Corpus.

**Order of Discharge.**

This matter having been regularly brought on for hearing upon the issues joined herein, and the same having been duly heard and submitted, and due consideration having been thereon had, it is by the Court now here ORDERED, that the said named person in whose behalf the Writ of Habeas Corpus was sued out, is illegally restrained of his liberty, as alleged in the petition herein, and that he be, and he is hereby discharged from the custody from which he has been produced, and that he go hence without day.

Entered this 13 day of January, 1916.

[Seal]

W. B. MALING,

Clerk.

By C. W. Calbreath,

Deputy Clerk.

[Endorsed]: Filed Jan. 13, 1916. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [31]

*In the District Court of the United States, in and for  
the Northern District of California, First Di-  
vision.*

No. 15,752.

In the Matter of HARRY KATZ, on Habeas Corpus.

**Petition for Appeal.**

To the Honorable M. T. DOOLING, Judge of the  
District Court of the United States, for the  
Northern District of California:

Edward White, as Commissioner of Immigration at the Port of San Francisco, appellant herein, feeling aggrieved by the order and judgment made and entered in the above-entitled cause, on the 13th day of January, A. D. 1916, discharging Harry Katz from the custody of said appellant, does hereby appeal from said order and judgment to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons set forth in the Assignment of Errors filed herewith.

WHEREFORE, petitioner prays that his appeal be allowed and that citation be issued as provided by law and that a transcript of the record, proceedings and documents, and all of the papers upon which said judgment and order were based, duly authenticated, be sent to the United States Circuit Court of Appeals, for the Ninth Circuit, under the rules of said Court and in accordance with the law in such cases made and provided.

Dated this 28th day of June, A. D. 1916.

JNO. W. PRESTON,

United States Attorney.

CASPER A. ORNBAUN,

Asst. United States Attorney.

[Endorsed]: Filed June 28, 1916. W. B. Maling,  
Clerk. By Lyle S. Morris, Deputy Clerk. [32]

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*In the District Court of the United States, in and for  
the Northern District of California, First Di-  
vision.*

No. 15,752.

In the Matter of HARRY KATZ, on Habeas Corpus.

**Assignment of Errors.**

Now comes Edward White, Commissioner of Immigration at the Port of San Francisco, respondent in the above-entitled cause and appellant in the appeal to the United States Circuit Court of Appeals, taken herein, by his attorneys, Jno. W. Preston, United States Attorney, and Casper A. Ornbaun, Assistant United States Attorney, and files the following Assignment of Errors upon which he will rely in the prosecution of his appeal in the above-entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit, from the order and judgment made by this Honorable Court on the 13th day of January, A. D. 1916.

I.

That the Court erred in granting the writ of habeas corpus and discharging the alien, Harry Katz, from

the custody of Edward White, Commissioner of Immigration;

## II.

That the Court erred in holding that it had jurisdiction to issue the writ of habeas corpus in the above-entitled cause, as prayed for in the petition of the said Harry Katz for a writ of habeas corpus;

## III.

That the Court erred in holding that the allegations contained in said petition for a writ of habeas corpus were [33] sufficient in law to justify the granting and issuing of a writ of habeas corpus.

## IV.

That the Court erred in finding that the evidence upon which the Secretary of Labor issued the warrant of deportation for the said Harry Katz was insufficient in character.

## V.

That the Court erred in inquiring into the character and sufficiency of the evidence considered by the said Secretary of Labor in issuing the said warrant of deportation.

## VI.

That the Court erred in holding that pure hearsay evidence and expressions of opinions tending to support the finding that the said Harry Katz had been found receiving, sharing in, or deriving benefits from the earnings of a prostitute, or prostitutes, was incompetent evidence and that it was error on the part of the said Secretary of Labor to base his order of deportation upon such evidence.

## VII.

That the Court erred in holding that the said Harry Katz was illegally restrained of his liberty by said Edward White, Commissioner of Immigration, and that the evidence taken and considered in the hearing of said case under the Immigration Act of February 20, 1907, as amended by the Acts of March 26, 1910, and March 4, 1913, was insufficient to justify said respondent, as Commissioner of Immigration, to detain or deport the said Harry Katz.

## VIII.

That the Court erred in discharging the said alien from the custody of said Edward White, Commissioner of Immigration. [34]

WHEREFORE, appellant prays that the said order and judgment of the United States District Court, in and for the Northern District of California, made and entered herein, in the office of the Clerk of said Court on the 13th day of January, A. D. 1916, setting aside the return to the petition for a writ of habeas corpus and discharging the said Harry Katz from the custody of Edward White Commissioner of Immigration, and appellant herein, be reversed, and that the said Harry Katz be remanded to the custody of the said Commissioner of Immigration.

Dated this 28th day of June, A. D. 1916.

JNO. W. PRESTON,

United States Attorney.

CASPER A. ORNBAUN,

Asst. United States Attorney.

[Endorsed]: Filed June 28, 1916. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [35]

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*In the District Court of the United States, in and for the Northern District of California, First Division.*

No. 15,752.

In the Matter of HARRY KATZ, on Habeas Corpus.

**Order Allowing Appeal.**

On motion of Jno. W. Preston, United States Attorney, and Casper A. Ornbaun, Assistant United States Attorney, attorneys for appellant in the above-entitled cause,

IT IS HEREBY ORDERED that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from an order and judgment heretofore made and entered herein be, and the same is hereby allowed, and that a certified transcript of the records, testimony, exhibits and stipulations, and all proceedings be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, in the manner and time prescribed by law.

M. T. DOOLING,

Judge of the District Court.

Dated this 28th day of June, A. D. 1916.

[Endorsed]: Filed June 28, 1916. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [36]

*In the District Court of the United States, in and for  
the Northern District of California, First Di-  
vision.*

No. 15,752.

In the Matter of HARRY KATZ, on Habeas Corpus.

**Notice of Appeal.**

To the Clerk of the Above-entitled Court and to  
Harry Katz, and to Marshall B. Woodworth,  
Esq., His Attorney.

You and each of you will please take notice that  
Edward White, Commissioner of Immigration at the  
Port of San Francisco, appellant herein, hereby ap-  
peals to the United States Circuit Court of Appeals  
for the Ninth Circuit, from an order and judgment  
made and entered herein on the 13th day of January,  
A. D. 1916, setting aside the return to the petition for  
a writ of habeas corpus, and discharging the said  
Harry Katz from the custody of said Edward White,  
Commissioner of Immigration at the port of San  
Francisco, appellant herein.

Dated this 28th day of June, A. D. 1916.

JNO. W. PRESTON,

United States Attorney.

CASPER A. ORNBAUN,

Asst. United States Attorney.

[Endorsed]: Filed June 28, 1916. W. B. Maling,  
Clerk. By Lyle S. Morris, Deputy Clerk. [37]

*In the Southern Division of the United States District Court for the Northern District of California, First Division.*

No. 15,752.

In the Matter of HARRY KATZ, on Habeas Corpus.

**Order for Transmission of Original Exhibits.**

It appearing to the Court that it is both necessary and proper that the original record of the Bureau of Immigration which was filed in the above-entitled court as Respondent's Exhibit "A," and which was made a part of respondent's Return to Petition for Habeas Corpus in said above-entitled cause, should be inspected in the United States Circuit Court of Appeals for the Ninth Circuit in determining the appeal of said cause,

IT IS THEREFORE ORDERED that the said original record be transferred by the clerk of the above-entitled court to the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, to be retained by the said clerk until the appeal in the above-entitled cause is properly disposed of, at which time the said original record is to be returned to the clerk of the above-entitled court.

WM. H. HUNT,  
Judge.

December 27, 1916.

[Endorsed]: Filed Dec. 27, 1916. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [38]

**Certificate of Clerk U. S. District Court, to  
Transcript on Appeal.**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 38 pages, numbered from 1 to 38, inclusive, contain a full, true and correct Transcript of certain records and proceedings, in the Matter of Harry Katz, on Habeas Corpus, No. 15,752, as the same now remain on file and of record in this office; said Transcript having been prepared pursuant to and in accordance with "Praecipe" (copy of which is embodied in this transcript), and the instructions of the U. S. Attorney.

I further certify that the cost for preparing and certifying the foregoing Transcript on Appeal is the sum of nineteen dollars and sixty cents (\$19.60).

Annexed hereto is the Original Citation on Appeal, issued herein, page 40.

IN WITNESS WHEREOF, I have heerunto set my hand and affixed the seal of said District Court, this 6th day of January, A. D. 1917.

[Seal]

WALTER B. MALING,

Clerk.

By F. L. Baldwin,

Deputy Clerk. [39]

**Citation on Appeal—Original.**

UNITED STATES OF AMERICA,—ss.

The President of the United States, to Harry Katz,  
and Marshall B. Woodworth, Esq., and S. L.  
Howe, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Southern Division of the Northern District of California, wherein Samuel W. Backus, Commissioner of Immigration, Port of San Francisco, and who is now succeeded by Edward White as Commissioner of immigration at the port of San Francisco, State of California is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable MAURICE T. DOOLING, United States District Judge for the Northern District of California, this 5th day of January, A. D. 1917.

M. T. DOOLING,  
United States District Judge. [40]

[Endorsed]: No. 15,752. United States District Court for the — District of —. Edward White,

Appellant, vs. Harry Katz. Citation on Appeal. Filed Jan. 5, 1917. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

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[Endorsed]: No. 2917. United States Circuit Court of Appeals for the Ninth Circuit. Samuel W. Backus, as Commissioner of Immigration at the Port of San Francisco, who is now Succeeded by Edward White, as Commissioner of Immigration at Said Port, Appellant, vs. Harry Katz, Appellee. Transcript of the Record. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Filed January 6, 1917.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.